

certification of completion of developmental steps (Sept. 21, 1981, 46 FR 46807). Based on the Evaluation Report for FY 1982 and available FY 1983 data and after opportunity for public comment and an informal public hearing held on June 29, 1983, in St. Thomas, Virgin Islands, the Assistant Secretary determined that in actual operations, the Virgin Islands State plan is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Virgin Islands plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective April 17, 1984. *Note:* The Virgin Islands final approval status under section 18(e) of the Act was suspended and Federal concurrent enforcement authority reinstated on November 13, 1995.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in the Virgin Islands. The plan does not cover private sector maritime employment; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Virgin Islands retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing

of agricultural or horticultural commodities.

*NOTE:* The Virgin Islands' final approval status under section 18(e) of the Act was suspended and full Federal concurrent enforcement authority reinstated on November 13, 1995.

(c) The Virgin Islands is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revision to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

(d) As a result of Federal monitoring of the U.S. Virgin Islands State Plan and after opportunity for public comment, the Assistant Secretary for Occupational Safety and Health has determined that the State Plan no longer meets the criteria for final approval under section 18(e). As a result the final approval status has been suspended and the State Plan reverts to "initial approval" status effective November 13, 1995. Concurrent Federal enforcement authority over occupational safety issues in the U.S. Virgin Islands has been reinstituted pending the necessary corrective action by the State Plan to again meet the criteria for an 18(e) final approval determination. Concurrent Federal enforcement authority will be exercised in the U.S. Virgin Islands effective November 13, 1995, and will continue until further notice.

[49 FR 16775, Apr. 20, 1984, as amended at 60 FR 56951, Nov. 13, 1995; 62 FR 2563, Jan. 17, 1997; 65 FR 36625, June 9, 2000]

#### **§ 1952.254 Level of Federal enforcement.**

(a) As a result of the Assistant Secretary's determination to suspend the final approval determination under section 18(e) for the Virgin Islands state plan, effective November 13, 1995, Federal occupational safety standards which have been promulgated under section 6 of the Act now apply to all covered employers in the Virgin Islands. Until subsequent determinations

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are made by Federal OSHA affecting the level of Federal enforcement in the Virgin Islands, discretionary Federal concurrent enforcement authority will be exercised in the following manner. Federal OSHA will exercise the full range of enforcement authority available under the Act, including but not limited to, issuance of citations under section 9 for violations of any requirement of section 5, of any standard, rule or order promulgated pursuant to section 6, or of any regulation prescribed pursuant to the Act; conduct of inspections and investigations under section 8; conduct of enforcement proceedings in contested cases under section 10; institution of proceedings to correct imminent dangers under section 13; and proposal of civil penalties or initiation of criminal proceedings for violations of the Act under section 17 with regard to occupational safety issues in the private sector. The Virgin Islands retains full authority under its approved State plan to continue to adopt and enforce occupational safety standards including issuing citations for violations thereof, proposing penalties and adjudicating contested cases under State law. Where State and Federal compliance officers conduct joint inspections, enforcement actions may be either Federal or State.

(b) Federal OSHA also continues to retain full authority over issues which have not been subject to State enforcement under the Virgin Islands plan. Thus, OSHA retains authority to enforce all provisions of the Act, Federal standards, rules, or orders which relate to occupational health in private sector employment in the Virgin Islands. OSHA also retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, Federal standards, rules, or orders specifically directed to maritime employment (*e.g.*, 29 CFR Part 1915, shipyard employment; 29 CFR Part 1917, marine terminals; 29 CFR Part 1918, longshoring; 29 CFR Part 1919, gear certification), as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction is retained with respect to Fed-

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eral government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.253(b).

(c) The Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees. Any Federal standards, including any standards promulgated or modified during the period of the Virgin Islands final approval under section 18(e), are now enforceable by Federal OSHA.

(d) The Assistant Secretary also retains authority to continue to conduct investigations and inspections for the purpose of the evaluation of the Virgin Islands State plan under section 18 (e) and (f) of the Act. The Regional Administrator will closely monitor State performance and corrective action and make prompt recommendation to the Assistant Secretary for either reinstatement of the Virgin Islands final approval status or initiation of plan withdrawal action. Federal enforcement authority will continue to be exercised to the extent necessary to assure occupational safety and health protection to employees in the Virgin Islands until further notice.

[60 FR 56951, Nov. 13, 1995, as amended at 62 FR 2563, Jan. 17, 1997; 65 FR 36626, June 9, 2000]

### § 1952.255 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected